

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That Laborer T. L. Luick was unjustly dismissed from service on May 10, 1982.
2. That accordingly, Laborer T. L. Luick be returned to service, immediately, with seniority rights, vacation rights, and other benefits that are a condition of employment, unimpaired, with compensation for all lost time, plus 6% annual interest. Further that he be reimbursed for all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant, T. L. Luick, who had a seniority date of April 20, 1978, was employed as an enginehouse laborer with the Carrier in its Diesel Shop facility at Chicago, Illinois. Following a formal hearing on May 4, 1982, Claimant was terminated by the Carrier effective May 10, 1982, for his fourth violation of General Rule O of the Belt Railway Company.

Rule O states the following:

"The service of either (1) a valid demand upon this Company for the wages of an employee by virtue of a wage assignment, or (2) the attachment of an employee's wages by garnishment process or other process served upon this Company, or (3) proceedings in aid of executions, are considered sufficient cause for disciplinary action. The repeated attachment of an employee's wages by garnishment process on more than a single indebtedness shall be considered sufficient cause for dismissal."

Claimant had run into serious economic difficulties in 1981 and was being sued by several creditors to obtain monies that he owed them. Judgments were obtained by some of those creditors, and within two months, Carrier received four wage demands from three of the Claimant's creditors. On November 3,

1981, Carrier received a wage demand from Ingalls Memorial Hospital in the amount of Two Hundred Twenty-Three Dollars (\$223). On December 21, 1981, the Carrier received another wage demand from Ingalls Memorial Hospital in the amount of One Hundred Fifty-Eight and 50/100 (\$158.50). On January 4, 1982, the Carrier received a wage demand from one Harold Richter in the amount of One Thousand Twenty-Three Dollars (\$1,023). Finally, on January 19, 1982, the Carrier received a wage demand from Carson, Pirie Scott and Company in the amount of Three Hundred Thirty-Seven and 77/100 Dollars (\$337.77).

After the Carrier received the fourth demand from Carson, Pirie Scott and Company, it decided it would take action to terminate the Claimant for violation of Rule 0.

Carrier contends that Claimant has admittedly violated Rule 0 and that he has allowed himself to go into debt and, consequently, have his wages garnished by several creditors in clear-cut violation of the rule. Carrier argues that it issued several warnings to Claimant dating back to an April 27, 1981, letter informing Claimant to "handle his matters promptly to ensure no involvement on the part of the Carrier." Other warnings were issued to Claimant on November 6, 1981, and two on January 7, 1982, prior to the Carrier's decision to terminate the Claimant when it received the Carson, Pirie Scott and Company garnishment on January 20, 1982. The Carrier argues further that Claimant acknowledged the violation of the rule at the formal hearing on the charges.

The Organization contends that Claimant attempted to remedy his financial problems by seeking the assistance of an attorney in December, 1981, and filing for bankruptcy in January, 1982. The Organization states that many of Claimant's debts resulted from a lengthy hospitalization and a divorce, which occurred earlier in 1981. The Organization argues that the dismissal was arbitrary and capricious. Finally, the Organization contends that Rule 0 is not part of the controlling agreement, and it violates the Consumer Creditors' Protection Act.

This Board has reviewed all of the evidence and testimony in this case and finds that the Carrier has a right to promulgate reasonable rules and regulations, and its promulgation of Rule 0 was valid. Moreover, this Board does not agree that Rule 0 violates the Consumer Creditors' Protection Act or any other federal or state law.

However, after reviewing the evidence, this Board holds that the Carrier's action in terminating the Claimant was arbitrary and capricious and should not stand. Claimant had only recently run into financial difficulties. All of the incidents of wage garnishments happened within a three-month period. The fact that Claimant did not "clean up his act" after receiving the first warning on November 3, 1981, does not point to a total disregard on his part for the warning but rather that his economic situation was starting to fall apart like a house of cards, and he did not have an opportunity to repair it before the next garnishments arrived. Finally, in December, 1981, he obtained an attorney to file bankruptcy. However, that attorney was obviously unable to stop, immediately, all of the lawsuit activity which had begun in the previous months prior to the first warning received by the Claimant. The attorney did file a bankruptcy on behalf of the Claimant and listed all of his creditors so that no future garnishments would occur. But, by that time, the Carrier had already begun the termination procedures.

Hence, the Claimant never had an opportunity to rehabilitate himself after receiving the first warning from the Carrier. Although there were four violations of Rule O, their proximity in time demonstrate that the Claimant was not given enough of an opportunity to reform himself.

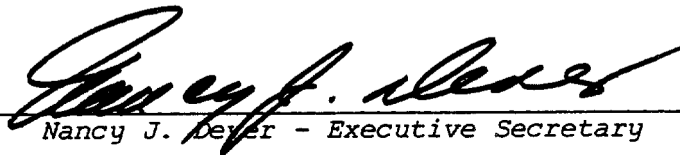
Claimant shall be reinstated without back pay but with his seniority intact because the discharge was arbitrary and premature. He has now, in effect, served a lengthy suspension clearly putting him on notice that Rule O must be followed in the future. However, he still deserves a second chance at retaining his job under the circumstances.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of August, 1984.